

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL NO. 3:05cv032**

PHILENA V. RUFFIN,)	
)	
Plaintiff,)	
)	
vs.)	
)	<u>ORDER</u>
HARRIS TEETER and RUDDICK)	
CORPORATION,)	
)	
Defendants.)	
)	

THIS MATTER is before the Court on Defendants' Motion to Dismiss (Doc. No. 2); Defendants' Memorandum in Support of the Motion to Dismiss, or Alternatively, Motion for a More Definite Statement (Doc. No. 3), both filed February 3, 2005; Defendants' Supplemental Memorandum (Doc. No. 8), filed on April 20, 2005; and the Magistrate Judge's Memorandum and Recommendation ("M&R") (Doc. No. 10), filed April 4, 2006. The Magistrate Judge recommended that Defendants' Motion to Dismiss be denied, and Defendants' Motion for a More Definite Statement be granted. The time for filing objections has since passed, and neither Plaintiff nor Defendant filed objections in this matter. Additionally, this matter is before the Court *sua sponte* with respect to the status of Plaintiff's case. For the reasons stated below, this Court DENIES Defendants' Motion to Dismiss, GRANTS Defendants' Motion for a More Definite Statement, and ORDERS Plaintiff to SHOW CAUSE why the Complaint should not be DISMISSED pursuant to Rule 4(m) of the Federal Rules of Civil Procedure for failure to prosecute this action.

I. STANDARD OF REVIEW

Pursuant to 28 U.S.C. § 636(b)(1)(B), United States Magistrate Judge Carl Horn III was

designated to consider and recommend disposition of Defendants Motion to Dismiss and the Alternative Motion for a More Definite Statement. The Federal Magistrate Act provides that “a district court shall make a de novo determination of those portions of the report or specific proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1); Camby v. Davis, 718 F.2d 198, 200 (4th Cir. 1983). “By contrast, in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

II. CONCLUSION

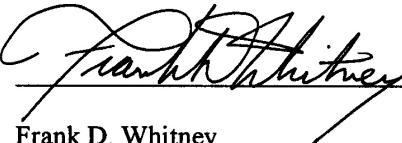
Accordingly, after a careful review of the record in this case, the Court finds that the Magistrate Judge's findings of fact are supported by the record and the conclusions of law are consistent with and supported by current case law. See Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982) (holding that only a careful review is required in considering a memorandum and recommendation absent specific objections). Thus, the Court hereby accepts the M&R of Magistrate Judge Horn and adopts it as the final decision of this Court for all purposes relating to this case.

The M&R ordered that Plaintiff shall file an Amended Complaint providing the factual grounds for each claim and the relief she seeks on or before May 15, 2006. As of July 26, 2006, Plaintiff has failed to file an Amended Complaint as ordered by Judge Horn. Furthermore, no further action has been taken by Plaintiff to prosecute this action. Thus, due to Plaintiff's failure to properly submit her Amended Complaint to this Court, as directed by the M&R filed April 4, 2006, this Court now orders Plaintiff to show cause as to why the case should not be dismissed.

IT IS, THEREFORE, ORDERED THAT:

1. Defendant's Motion to Dismiss is **DENIED WITHOUT PREJUDICE**;
2. Defendants' Motion for a More Definite Statement is **GRANTED**; and
3. Plaintiff must **SHOW CAUSE** why the Complaint should not be **DISMISSED** pursuant to Rule 4(m) of the Federal Rules of Civil Procedure for failure to prosecute this action. Plaintiff is warned that failure to make a timely response to this Order to Show Cause will result in **DISMISSAL** of this lawsuit.

Signed: July 26, 2006



Frank D. Whitney
United States District Judge

